IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3864 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIV SHAKTI TRADING CO. - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR JAGDISH MEHTA for Petitioner No.1,
MR M.R.MENGDEY AGP for Respondent Nos.1 to 3.
NONE for Respondent Nos.4 & 5 though served..

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/06/2007

ORAL JUDGMENT

1. Mr.Jagdish Mehta, learned counsel for the petitioner. Mr. M.R. Mengdey, learned Assistant Government Pleader for the respondent Nos.1 to 3. None for the respondent Nos.4 and 5

though served.

2. The petitioner, being aggrieved by the order dtd.3/6/1992 passed in Case No.RAJ-1092-1746-J by the Dy.Secretary, Food and Civil Supply Department, is before this Court with a submission that the State Government could not refuse to exercise the power only on the ground that despite the orders passed by the Collector, licence issued in favour of the petitioner was not cancelled.

3. It is to be noted that the petitioner's application for grant of kerosene vending licence was allowed, a licence was issued but, thereafter, on an appeal by one Naranbhai Govindbhai, the Collector vide his order dtd.12/5/1992 directed the Mamlatdar to cancel the licence though in the said appeal the petitioner was not joined as party respondent. Being aggrieved by the Collector's order dtd.12/5/1992, the petitioner filed Revision No.1092-1746-J which has been rejected simply on the ground that the licence on the date of the order was not cancelled, therefore, no orders could be passed in the revision.

4. In the opinion of this Court, the order of the Collector if is not interfered in any revision, then, the said order would attain finality and in execution of the said order in

accordance with the directions of the Collector, the Mamlatdar would be obliged to cancel the licence.

5. Cancellation of the licence as a fact would not make the revision maintainable, but, passing of the order directing cancellation of the licence would, in fact, give a cause of action in favour of the petitioner to challenge the said order before the revisional forum. In the opinion of this Court, revisional authority committed an illegality in refusing to entertain the revision petition. The impugned order dtd.3/6/1992 passed by the Dy.Secretary, Food and Civil Supply Department, Gujarat State, is hereby quashed. The matter is remanded back to the State Government for its fresh disposal in accordance with law, after giving due opportunity of hearing to the petitioner and Mr.Naranbhai Govindbhai who was the appellant before the Collector. The parties present in this Court shall appear before the State Government on 16/7/2007 and shall submit a copy of this judgment before the State Government enabling it to understand what it has to do in the matter. The State Government shall issue necessary notice to Naranbhai Govindbhai and after seeking service report, shall decide the matter, preferably within four months from the date of service of the notice on the said Naranbhai Govindbhai.

6. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent. No costs.

(R.S. GARG, J.)

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